

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

CONTINENTAL 332 FUND, LLC,
CONTINENTAL 298 FUND LLC,
CONTINENTAL 306 FUND LLC,
CONTINENTAL 326 FUND LLC,
CONTINENTAL 347 FUND LLC,
CONTINENTAL 355 FUND LLC,
CONTINENTAL 342 FUND LLC,
CONTINENTAL 245 FUND LLC and
KMM CONSTRUCTION OF FLORIDA,
LLC,

Plaintiffs,

v.

Case No.: 2:17-cv-41-FtM-38MRM

DAVID ALBERTELLI, ALBERTELLI
CONSTRUCTION INC.,
WESTCORE CONSTRUCTION,
LLC, NATIONAL FRAMING, LLC,
MFDC, LLC, TEAM CCR, LLC,
BROOK KOZLOWSKI, JOHN
SALAT, KEVIN BURKE, KERRY
HELTZEL, AMY BUTLER, US
CONSTRUCTION TRUST,
FOUNDATION MANAGEMENT,
LLC, KMM CONSTRUCTION, LLC,
GEORGE ALBERTELLI, GREGORY
HILZ, and GREAT AMERICAN
INSURANCE COMPANY,

Defendants.

OPINION AND ORDER¹

¹ Disclaimer: Documents hyperlinked to CM/ECF are subject to PACER fees. By using hyperlinks, the Court does not endorse, recommend, approve, or guarantee any third parties or the services or products they provide, nor does it have any agreements with them. The Court is also not responsible for a hyperlink's availability and functionality, and a failed hyperlink does not affect this Order.

Before the Court is Gregory Hilz's Motion to Reopen Discovery for the Limited Purpose of Deposing Defendant Kerry Heltzel ([Doc. 533](#)). Plaintiffs initially notified all parties that they would depose Heltzel on September 23, 2019. ([Doc. 533-1](#)). But Plaintiffs rescheduled the deposition for October 1, 2019, before postponing it indefinitely. ([Doc. 533-2](#); [Doc. 533-3](#)). On October 29, 2019, about a month after the discovery deadline, Plaintiffs filed an affidavit by Heltzel with their response to Hilz's motion for summary judgment. ([Doc. 513-4](#)). Heltzel then produced about 21 gigabytes of documents via a document sharing platform used by Plaintiffs. ([Doc. 533-4](#); [Doc. 533-5](#)). Plaintiffs moved to dismiss their claims against Heltzel a week later. ([Doc. 530](#)). Hilz argues that the apparent settlement between Heltzel and Plaintiffs is good cause to reopen discovery for the limited purpose of taking Heltzel's deposition. Although counsel for Heltzel and Plaintiffs do not consent to the deposition, no party filed a response opposing Hilz's Motion.

A party moving to reopen discovery for good cause should show that it failed to timely complete discovery due to excusable neglect. [EarthCam, Inc. v. OxBlue Corp.](#), 703 F. App'x 803, 813 (11th Cir. 2017). Courts consider four factors: (1) the danger of prejudice to the nonmovant; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith. *Id.* (citing [Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship](#), 507 U.S. 380, 395 (1993)).

All four factors support reopening discovery. The Court finds no risk of prejudice to any nonmovant, and no party has raised any. Allowing Hilz to depose Heltzel will not delay trial, which the Court already postponed because of the agreement between

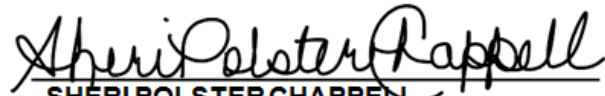
Plaintiffs and Heltzel. ([Doc. 544](#)). Hilz's decision not to depose Heltzel before the discovery deadline was reasonable, and the Court finds no evidence of bad faith.

Accordingly, it is now

ORDERED:

Gregory Hilz's Motion to Reopen Discovery for the Limited Purpose of Deposing Defendant Kerry Heltzel ([Doc. 533](#)) is **GRANTED**. Hilz may depose Heltzel on or before February 28, 2020.

DONE and **ORDERED** in Fort Myers, Florida this 23rd day of January, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record